

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

AVIO, INC,

Plaintiff,

v

Case No. 2015-147786-CB

Hon. Wendy Potts

INTEGRATED LIFESTYLES, INC, et al,

Defendants.

OPINION AND ORDER RE:
DEFENDANT AMERICAN HOME TECHNOLOGY'S MOTION FOR CHANGE OF
VENUE
AND
MOTION FOR CHANGE OF VENUE BY DEFENDANT STUHR

At a session of Court
Held in Pontiac, Michigan

On
SEP 30 2015

Defendants Timothy Stuhr and Integrated Lifestyles, Inc. d/b/a American Home Technology move the Court to order a change of venue on the ground that venue is not proper in Oakland County. Plaintiff Avio, Inc. has the burden of demonstrating that the county it chose is a proper venue. *Johnson v Simongton*, 184 Mich App 186, 190; 457 NW2d 129 (1990).

AHT asserts that the applicable venue statute is MCL 600.1629, which governs tort claims. Stuhr contends that the general venue statute MCL 600.1621 applies, however, MCL 600.1641(2) states that if a complaint pleads more than one claim and one of the claims is based on tort, venue is determined under MCL 600.1629.

Although Avio argues that MCL 600.1629 applies only to personal injury claims, the Court of Appeals rejected this position and concluded that under MCL 600.1641(2), the tort

venue statute applies “if one of the causes of action pleaded in a multiple cause of action complaint is based on tort, regardless of whether damages sought are for personal injury, property damage, or wrongful death.” *Angelucci v Dart Props*, 301 Mich App 209, 217; 836 NW2d 219 (2013). Thus, it is irrelevant whether Avio’s claims assert personal injury or economic injuries. Because Avio alleges a claim for tortious interference with a contract, the Court must apply the tort venue statute.

Determining venue under the tort statute involves considering a series of alternatives. In the first alternative, venue is proper in the county where “the original injury occurred” and where one of two conditions is met (i) the defendant resides, has a place of business, or conducts business in that county or (ii) a defendant’s corporate registered office is located. MCL 600.1629(1)(a)(i-ii). Because there is no dispute that Defendants all reside in or have a place of business in Charlevoix County, under §1629(1)(a) venue would be proper in Charlevoix County if the original injury occurred there.

For the purpose of determining venue, the original injury is “the first injury resulting from an act or omission of a defendant.” *Dimmitt & Owens Financial, Inc v Deloitte & Touche (ISC), LLC*, 481 Mich 618, 630; 752 NW2d 37 (2008). Avio’s tortious interference claim is based on AHT’s employment of Stuhr and its acquisition of customers and business that Stuhr allegedly procured through soliciting Avio’s customers. Stuhr claims that when he engaged in the solicitation at issue, he was working out of AHT’s offices in Charlevoix County. Although Plaintiff now asserts that Stuhr solicited customers in Oakland County, it presents no evidence to support this claim. Even if Avio could show that Stuhr’s engaged in conduct in Oakland County that constituted a breach of his nonsolicitation agreement, the key question is where AHT allegedly tortiously interfered with the agreement. Plaintiff presents no allegation or evidence

that AHT engaged in conduct in Oakland County that could constitute the original injury in Avio's tortious interference claims. Thus, the original injury occurred in Charlevoix County.

Because Plaintiff has the burden of demonstrating that venue is proper, *Johnson, supra*, and it fails to show that the original injury occurred in Oakland County, Plaintiff has not established that venue is proper here and Defendants' motions must be granted.

Within 7 days, Plaintiff must pay the applicable filing fees under MCR 2.223(B)(1). The Court will enter an order transferring venue to Charlevoix County after Plaintiff pays the fees.

IT IS SO ORDERED.

Dated:

SEP 30 2015



Hon. Wendy Potts